IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Neki Ram & Ors. Vs. State of Rajasthan & Ors.

S.B.CR.MISC.PETITION NO.913/2003

against the order dt.21.5.2003 passed by Chief Judicial Magistrate, Churu in Cr.Case No.155/2003.

DATE OF ORDER :: July 26, 2006

PRESENT

HON'BLE MR.H.R.PANWAR,J.

Mr. Bagrawat Singh, for the petitioners.
Mr.Ashok Upadhyaya, P.P.
Mr.P.N.Mohanani, for non-petitioners.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioners have challenged the order dt. 21.5.2003 passed by Chief Judicial Magistrate, Churu (for short 'the trial court' hereinafter) in Cr.Case No.155/2003, whereby the trial court took the cognizance of the offences under sections 420, 406 and 120-B I.P.C. and issued the process. Aggrieved by the order impugned, the petitioners have filed the instant criminal misc. petition.

I have heard learned counsel for the parties. Carefully gone through the order impugned as also the record of the trial court.

It is contended by learned counsel for the petitioners that the police thoroughly investigated the matter and after investigation, the police filed a negative final report on the ground that the matter is of civil nature and, therefore, the trial court fell in error in taking cognizance of the offences noticed above. He has relied on two decisions of Hon'ble Supreme Court in Ram Biraji Devi & Anr. vs. Umesh Kumar Singh & Anr. **2006 (1) WLC (SC) Criminal 723** and in S.W. Palanitkar & Ors. vs. State of Bihar & Anr., **2002 WLC (SC) Criminal 74.**

Learned counsel appearing for the complainant and the Public Prosecutor supported the order impugned and contended that right from the beginning, the accused-petitioners have fraudulently and by deceitful intention, induced the complainant to part with the amount and subsequently that amount was not paid. Learned counsel for the complainant submits that merely because of a civil remedy is also available, it cannot be said that the criminal case has to be quashed. He has relied on a decision of Hon'ble Supreme Court in Jagdish Ram vs. State of Rajasthan & Anr. **2004 CRI.L.J. 5008.**

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

In S.W.Palanitkar & Ors. vs. State of Bihar & Anr. (supra), the Honb'le Supreme Court observed that every breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a mental act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person wronged may seek his redress for damage in a civil court but a breach of trust with mens rea gives rise to a criminal prosecution as well. So far as decision cited by the counsel in Ram Biraji Devi & Anr. vs. Umesh Kumar Singh & Anr.(supra) is concerned, it turns on its own facts. There was absolutely no whisper of criminal intent as noticed by the Hon'ble Supreme Court.

In Ram Biraji Devi & Anr. vs. Umesh Kumar Singh & Anr. (supra), the Apex Court on examination of the contents of the complaints found that there is no even a whisper of allegation or averment made therein constituting an offence for which cognizance has been taken by the learned Magistrate against the appellants therein. On the one hand, the complainant himself has stated in the complaint that oral agreement to sell the plot took place in July, 2002 and on the other hand, he has alleged

that he started paying the consideration amount for the purchse of the plot between 15.7.2000 and 15.12.2002. The version of the complainant is self-contradictory and, therefore, no prima facie case is made out against the appellants therein involving them in the commission of the alleged offences.

In the instant case, in the complaint itself, it has been alleged that the petitioners hatched conspiracy and by fraudulent and deceitful means, induced the complainant to part with the property i.e. amount making the complainant to believe that if the complainant deposits a sum of Rs.200/- per month, then after five years a sum of Rs.25,000/- will be paid knowing well that the petitioners never intended to pay the amount and as such by fraudulent and deceitful means by inducing the number of persons the petitioners took a sum of Rs.2,43,000/- and declined to return the original amount with other benefits as assured fraudulently by them at the time of inducing the complainant to part with the amount and, therefore, in my view there is prima facie ample evidence and the element of cheating as also the criminal breach of trust and, therefore, there is an evidence of strong mens rea for commission of the crime. Thus, keeping in view the decisions of Hon'ble Supreme Court in Lalmuni Devi (Smt.) vs. State of Bihar & Ors., **(2001) 2 SCC 17,** and Alpic Finance Ltd. vs. P.Sadasivan & Anr., **(2001) 3**

SCC 513, wherein the Hon'ble Supreme Court held that the civil proceeding as also the criminal action can simultaneously proceed if the facts disclose the commission of the offence.

In Jagdish Ram vs. State of Rajasthan & Anr. (supra), the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is a sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate in supporting the conviction, can be determined only at the trial and not at the stage of enquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

Keeping in view the decision of Hon'ble Supreme Court in Jagdish Ram vs. State of Rajasthan & Anr. (supra), Lalmuni Devi vs. State of Bihar (supra) and Alpic Finance Ltd. vs. P.Sadasivan

(supra), I am of the view that the element of dishonest and fraudulent intention to cheat as also a criminal breach of trust is prima facie made out and, therefore, the trial court rightly concluded that merely because of a civil remedy available, if the offence is made out from the statements of the witnesses produced by the prosecution and complainant, then the criminal court is not precluded to proceed with the matter.

In the instant case, the order of the trial court is well reasoned and has assigned the reasons for not accepting the negative final report as also on perusal of the statements of Neki, Ganpat, Vijay and Hetram, the trial court prima facie came to the conclusion that there is a ground to proceed against the petitioners and accordingly, the trial court took the cognizance of the offences noticed above and issued the process and in my view it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any court.

Consequently, the criminal misc. petition has no force and the same is dismissed. Record of the trial court be returned forthwith.

[H.R.PANWAR],J.

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